

High Crt Presses For Answers In Baby Bell Case

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WASHINGTON (Dow Jones)--The U.S. Supreme Court Monday pressed both sides in its search for how much evidence plaintiffs must provide to litigate a private antitrust conspiracy lawsuit against several Baby Bell companies.

Verizon Communications Inc. (VZ), BellSouth Corp. (BLS), AT&T Inc.'s (T) SBC Communications Inc. unit, and Qwest Communications International Inc. (Q) have all been trying to block a class-action lawsuit alleging they engaged in an anticompetitive conspiracy to restrict competition in the local telephone and broadband Internet markets.

The lawsuit is still in its early stages. The companies and the U.S. Justice Department, at oral arguments on the appeal, urged the Supreme Court to set private antitrust lawsuit standards that ends the case before expensive legal discovery takes place.

"The private plaintiffs do not have the authority to pursue purely investigative complaints," said Michael Kellogg, a Washington-based attorney who represented the companies.

The justices are considering whether the 2nd U.S. Circuit Court of Appeals in New York was right to overturn a federal trial court ruling that threw the case out. The high court will specifically decide whether the plaintiffs in the case - a proposed class-action for customers since 1996 federal telecommunications law changes - must allege specific anticompetitive acts that are suspicious enough to warrant consideration for a trial.

The justices probed for how to draw a legal line between allowing a lawsuit against illegal conduct and barring one for corporate activity that simply reflects prudent business decisions not to compete in some geographic areas or with some product offerings.

Thomas Barnett, the Justice Department's antitrust chief, told the justices that plaintiffs "should not be able to survive a motion to dismiss unless it challenges a set of facts."

Barnett faced tough questioning from several justices who wanted him to justify the government's position based on antitrust rulings that have taken place since a 1986 Supreme Court ruling made it easier to stop private lawsuits before trial.

But the court was equally hard on J. Douglas Richards, the New York attorney who represented the plaintiffs. Richards told the court that the lawsuit could proceed to legal discovery without proving the allegations.

"You don't have to prove your case in the complaint," Richards said. Instead, he said the Second Circuit was correct when it ruled more court proceedings are required before the telecommunications companies can win a dismissal.

Justice Stephen Breyer and others appeared concerned about making it too easy to bring private antitrust litigation under the Sherman Act, telling Richards at one point that upholding his position would result in the court "engaging in a major restructuring of the economy."

Prior to the Second Circuit decision, a U.S. District Court judge dismissed the case, ruling the plaintiffs hadn't shown the companies might have violated federal antitrust laws. A ruling overruling the Second Circuit and backing the trial court would likely make it harder for consumers to challenge anticompetitive activity in telecommunications and other industries. If the court upholds the appeals court ruling, companies facing similar lawsuits would likely face higher litigation costs as they fight in court to get class-action conspiracy suits thrown out.

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